BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CHRIS ROSENBOOM Claimant VS.	)	
	)	Docket No. 190,218
VALLEY OFFSET PRINTING Respondent AND	)	
UNITED STATES FIDELITY & GUARANTY COMPANY Insurance Carrier	)	

ORDER

ON the 15th day of September, 1994, the application of the respondent for review by the Workers Compensation Appeals Board of an Order entered by Administrative Law Judge Nelsonna Potts Barnes, dated July 28, 1994, came on for oral argument.

APPEARANCES

The claimant appeared by and through his attorney, Gregory D. Bell of Wichita, Kansas. The respondent and its insurance carrier appeared by and through their attorney, Curtis L. Perry of Wichita, Kansas. There were no other appearances.

RECORD

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed matter, including the July 21, 1994 Preliminary Hearing before Administrative Law Judge Nelsonna Potts Barnes and the exhibits attached thereto.

ISSUES

(1) Did claimant suffer an injury arising out of and in the course of his employment?

(2) Was notice of the accident given to the employer with ten (10) days after the date of the accident pursuant to K.S.A. 44-520 or was

claimant's failure to provide notice to the respondent as required by the statute due to just cause?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds the Order of Administrative Law Judge Nelsonna Potts Barnes, dated July 28, 1994, is appropriate and remains in full force and effect.

Claimant, a machine operator for respondent, was involved in a multitude of jobs requiring repetitive use of his hands and wrists. In October 1993, he began experiencing symptoms in his left hand and wrist, including burning in his left palm. In November 1993, the symptoms in his left upper extremity worsened, spreading into his upper arm and shoulder and he began experiencing problems in his right upper extremity, specifically in the right palm, wrist and elbow. Between experiencing symptoms in his left upper extremity and the time he began experiencing symptoms in his right upper extremity, claimant discussed his problems with Robert McDaniel, the department head. Claimant testified Mr. McDaniel had worked the same job as claimant and had apparently experienced symptoms to his hands while so employed.

Claimant experienced difficulty primarily while working with the folding machine which required repetitive grasping and squeezing with his hands.

The medical records of Dr. Mark Melhorn, the authorized treating physician, indicated that claimant's work comprised only one-sixth or less of the total component of his injuries. This information by Dr. Melhorn appears to be contradicted by his restrictions upon returning claimant to work wherein he advises claimant be restricted on the folding machine to two hours out of each three-hour period with the remaining one hour being non-repetitive work. Dr. Melhorn also recommended no overtime, limiting claimant to a forty-hour week, comprised of five eight-hour days. Dr. Melhorn recommended pre-work warmup for the claimant's hand, showing a concern regarding the physical activities of claimant's job.

Claimant's immediate supervisor, Mr. James Martin, denied notice regarding claimant's ongoing problems but expressed no surprise when asked about the possibility of claimant going over his head to Mr. McDaniel. Mr. Martin advised claimant had a habit of going over his head. He did admit that claimant's job included a multitude of tasks and required repetitive gripping, squeezing and grasping with his hands. He felt that this was the easiest job in the plant but at the same time admitted to the repetitive nature of the job.

Respondent alleges this matter is non-compensable, pointing out the language of K.S.A. 44-508(e) which prohibits recovery if it can be shown that the employee suffered a disability as a result of the natural aging process or by the normal activities of day-to-day living.

While Dr. Melhorn's medical reports do indicate several contributing factors to claimant's ongoing problems, he does verify a portion of the aggravation stems from claimant's work activities with respondent.

K.S.A. 44-508(e) states in part:

> "'Personal injury' and 'injury' mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor."

While there may be some question as to the extent of damage caused by claimant's employment, it does appear from the preponderance of the medical evidence that claimant's body has, to a certain extent, given way under the stress of his usual labor. The Appeals Board finds, based upon the medical evidence, that claimant has proven by a preponderance of the credible evidence that he is entitled to benefits for his work-related injuries.

Respondent also alleges claimant is in violation of K.S.A. 44-520 in failing to provide notice of his accident within ten (10) days.

Claimant, in filing his E-1, alleged an injury date of October 1993 and each day thereafter. Claimant testified as to having discussed this problem with his department head, Mr. Robert McDaniel. This contention by claimant is not contradicted by his immediate supervisor, Mr. James Martin, who verified claimant had, in the past, gone over his head and discussed problems with Mr. McDaniel.

K.S.A. 44-501(a) states in part:

> "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

This burden must be established by a preponderance of the credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

Claimant's testimony that he talked to Mr. McDaniel between suffering the injuries to his left upper extremity and his right upper extremity is uncontradicted and appears trustworthy. The Appeals Board finds for purpose of preliminary hearing that claimant has met his burden of proving notice to the employer under K.S.A. 44-520 within ten (10) days of the alleged accident.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes, dated July 28, 1994, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of September, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Gregory D. Bell, PO Box 47528, Wichita, KS 67201-7528
Curtis L. Perry, 200 W. Douglas, Suite 630, Wichita, KS 67202
Nelsonna Potts Barnes, Administrative Law Judge
George Gomez, Director